

ORIGINAL

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FILED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

JAN 13 2006

at 6 o'clock and 10 min. PM  
 SUE BEITIA, CLERK

Attorneys for Plaintiff and  
 Third-Party Defendants

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a Japanese corporation,	)	CIVIL NO. 04-00124 ACK/BMK
Plaintiff,	)	THIRD-PARTY DEFENDANTS SPORTS SHINKO (USA) CO., LTD., SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION AND OCEAN RESORT HOTEL CORPORATION'S ANSWER TO DEFENDANT FRANKLIN K. MUKAI'S THIRD-PARTY COMPLAINT FILED ON SEPTEMBER 26, 2005; THIRD-PARTY COUNTERCLAIM AGAINST FRANKLIN K. MUKAI, ET AL.; SUMMONS; CERTIFICATE OF SERVICE
vs.	)	
QK HOTEL, LLC, a Hawai'i limited liability company, KG HOLDINGS, LLC, a Hawai'i limited liability company, FRANKLIN K. MUKAI,	)	
Defendant.	)	
FRANKLIN K. MUKAI,	)	
Third-Party Plaintiff,	)	
vs.	)	
SPORTS SHINKO (USA) CO.; LTD., a Delaware corporation; SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (MILILANI) CO., LTD., a Hawai'i corporation; SPORTS	)	NO TRIAL DATE SET

SHINKO (KAUAI) CO., LTD., a )  
Hawai`i corporation; SPORTS )  
SHINKO (PUKALANI) CO., LTD., )  
a Hawai`i corporation; SPORTS )  
SHINKO RESORT HOTEL CORPORATION, )  
a Hawai`i corporation; SPORTS )  
SHINKO (WAIKIKI) CORPORATION, )  
a Hawai`i corporation; and )  
OCEAN RESORT HOTEL CORPORATION, )  
a Hawai`i corporation, )  
)  
Third-Party )  
Defendants. )  
)  
)  
SPORTS SHINKO (HAWAII) CO., )  
LTD., a Hawai`i corporation; )  
SPORTS SHINKO RESORT HOTEL )  
CORPORATION, a Hawai`i )  
corporation; and SPORTS SHINKO )  
(WAIKIKI) CORPORATION, a Hawai`i )  
corporation, )  
)  
Third-Party Defendants/ )  
Counterclaimants, )  
)  
vs. )  
)  
QK HOTEL, LLC, a Hawai`i limited )  
liability company, KG HOLDINGS, )  
LLC, a Hawai`i limited liability )  
company, FRANKLIN K. MUKAI, )  
)  
Third-Party Counterclaim )  
Defendants. )  
)

THIRD-PARTY DEFENDANTS SPORTS SHINKO (USA) CO., LTD.,  
SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO.,  
LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI)  
CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO  
(WAIKIKI) CORPORATION AND OCEAN RESORT HOTEL CORPORATION'S  
ANSWER TO DEFENDANT FRANKLIN K. MUKAI'S THIRD-PARTY  
COMPLAINT FILED ON SEPTEMBER 26, 2005

Third-Party Defendants SPORTS SHINKO (USA) CO., LTD.,  
SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO.,  
LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI)  
CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO  
(WAIKIKI) CORPORATION AND OCEAN RESORT HOTEL CORPORATION  
(collectively, the "SS Entities"), by and through their  
attorneys, Alston Hunt Floyd & Ing, hereby respond to Defendant  
and Third-Party Plaintiff Franklin K. Mukai's ("Mukai") Third-  
Party Complaint (the "Third-Party Complaint") filed herein on  
September 26, 2005 as follows:

**FIRST DEFENSE**

1. The Third-Party Complaint fails to state a claim  
upon which relief may be granted.

**SECOND DEFENSE**

2. In answer to Paragraph 1 of the Third-Party  
Complaint, the SS Entities admit that Plaintiff Sports Shinko  
Co., Ltd. ("SSJ") filed a Second Amended Complaint seeking  
certain relief against Mukai, but responds that the Exhibit "A"  
attached to the Third-Party Complaint speaks for itself and on  
that basis denies any remaining allegations in that Paragraph.

3. In answer to Paragraph No. 2 of the Third-Party Complaint, the SS Entities admit that Sports Shinko (USA) Co., Ltd. was at all relevant times a Delaware corporation and that its principal place of business is not Hawai`i.

4. The SS Entities admit the allegations in Paragraph Nos. 3, 4, 5, 6, 7, 8, and 9 of the Third-Party Complaint.

5. In answer to Paragraph No. 10 of the Third-Party Complaint, the SS Entities admit the Court has jurisdiction pursuant to 28 U.S.C. § 1367 and principles of supplemental jurisdiction.

6. The SS Entities deny the allegations in Paragraph No. 11, 12, and 13 of the Third-Party Complaint and leave Mukai to his proof.

7. Any allegation not specifically admitted herein is denied.

**THIRD DEFENSE**

8. Mukai's acts and omissions, including his breaches of fiduciary duty, were a proximate cause of the injuries alleged by Plaintiff. During all relevant periods of time, the SS Entities acted through their former management, including Mukai; the SS Entities did not cause any injury to Plaintiff Sports Shinko (USA) Co., Ltd. except through the actions or omissions of Mukai and others.

**FOURTH DEFENSE**

9. Mukai's claims are barred by the doctrine of unclean hands.

**FIFTH DEFENSE**

10. The SS Entities intend to rely on every defense identified in Rules 8 and 12 of the Federal Rules of Civil Procedure which is supported by evidence adduced in discovery.

**SIXTH DEFENSE**

11. The SS Entities may rely on the defense of waiver and estoppel.

WHEREFORE, the SS Entities pray that this Court:

A. Dismiss the Third-Party Complaint against them with prejudice.

B. Award the SS Entities their attorneys' fees and costs herein.

C. Grant the SS Entities such further and other relief that the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawai'i, January 13, 2006.



PAUL ALSTON  
GLENN T. MELCHINGER

Attorneys for Plaintiff  
and Third-Party Defendants,  
the SS Entities

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing to be served on the following persons by facsimile, hand-delivery or U.S. mail, postage prepaid (as indicated below) to their respective addresses:

	HAND- DELIVERED	FAX	MAILED
WILLIAM A. BORDNER, ESQ. Suite 3100, Mauka Tower 737 Bishop Street Honolulu, HI 96813	(      )	(      )	( X )
Attorney for Defendant and Third-Party Plaintiff FRANKLIN K. MUKAI			
WARREN PRICE, III, ESQ. ROBERT A. MARKS, ESQ. 728 Ocean View Center 707 Richards Street Honolulu, HI 96813	(      )	(      )	( X )
Attorneys for Defendants KIAHUNA GOLF CLUB, LLC; KG KAUAI DEVELOPMENT, LLC; PUKALANI GOLF CLUB, LLC; KG MAUI DEVELOPMENT, LLC; MILILANI GOLF CLUB, LLC; QK HOTEL, LLC; OR HOTEL, LLC; AND KG HOLDINGS, LLC			

DATED: Honolulu, Hawai'i, January 13, 2006.



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GLENN T. MELCHINGER

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and Third-Party Defendants,  
the SS Entities